Appendix A

(T. D. 2713.)

STAMP TAXES.

Classification of bonds of indebtedness and promissory notes for the purpose of the stamp tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

To collectors of internal revenue and others concerned:

By Schedule A of Title VIII of the act of October 3, 1917, stamp taxes are imposed as follows:

1. Bonds of indebtedness: Bonds, debentures, or certificates of indebtedness issued on and after the first day of December, nineteen hundred and seventeen, by any person, corporation, partnership, or association, on each \$100 of face value or fraction thereof, 5 cents: *Provided*, That every renewal of the foregoing shall be taxed as a new issue: *Provided further*, That when a bond conditioned for the repayment or payment of money is given in a penal sum greater than the debt secured, the tax shall be based upon the amount secured.

* * * * *

6. Drafts or checks payable otherwise than at sight or on demand, promissory notes, except bank notes issued for circulation, and for each renewal of the same, for a sum not exceeding \$100, 2 cents; and for each additional \$100 or fractional part thereof, 2 cents.

Although in a broad sense many notes are bonds and many bonds are notes, obviously Congress did not intend

to tax the same instrument under two heads. The following propositions are believed to express the legislative intent:

(1) An instrument under seal conditioned in a penal amount for the payment of a sum of money, such as often accompanies mortgages, is a bond within the meaning of the statute.

(2) An instrument not under seal containing a simple promise to pay a sum of money at a specified time, such as is common in every-day commercial use, is a promissory note within the meaning of the statute.

(3) Instruments containing the essential features of a promissory note, but issued by corporations in numbers under a trust indenture, either in registered form or with coupons attached, embodying provisions for acceleration of maturity in the event of any default by the obligor, for optional registration in the case of bearer bonds, for authentication by the trustee, and sometimes for redemption before maturity, or similar provisions, are bonds within the meaning of the statute, whether called bonds, debentures, or notes. However, a short-term instrument, although issued by a corporation under a trust indenture, may be regarded as a note if every instrument of such issue both (a) is payable to bearer and incapable of registration and (b) lacks interest coupons and so requires presentation upon each payment of interest.

The term "debenture" ordinarily, although not necessarily, refers to an unsecured bond. A "certificate of indebtedness" is primarily any instrument acknowledging liability for the payment of money, not in the recognized

form of a promissory note or bill of exchange. Certificates of deposit, however, are not taxed.

T. D. 2257 of October 30, 1915, is affirmed.

DANIEL C. ROPER

Commissioner of Internal Revenue.

Approved May 14, 1918:

L. S. ROWE,

Acting Secretary of the Treasury.

Appendix B

Extracts from Regulations No. 55, T. D. 3094, 22 Treas. Dec. Int. Rev. 502 (1920).

"ART. 8. Instruments issued by corporations in numbers, under a trust indenture, are bonds.—Instruments containing the essential features of a promissory note, but issued by corporations in series, secured by a trust indenture, either in registered form or with coupons attached, embodying provisions for acceleration of maturity in the event of any default by the obligor, for optional registration in the case of bearer bonds, for authentication by the trustee, and in some instances for redemption before maturity, or similar provisions, are bonds within the meaning of the statute, whether called bonds, debentures, or notes."

* * * * *

"ART. 10. Instrument styled a bond and under seal a bond, unless.—An instrument which is styled a 'bond' and which is under seal should be held subject to tax as a bond unless it is shown affirmatively that it is not a bond."

* * * * *

"ART. 14. Certificates of indebtedness.—(a) The term 'certificates of indebtedness' includes only instruments having the general character of investment securities as distinguished from instruments evidencing debts arising in ordinary transactions between individuals.

(b) Conditional bills of sale used in the sale of merchandise on the installment plan are not certificates of indebtedness within the meaning of Schedule A 1 and are

not subject to stamp tax unless containing an obligation in the form of a promissory note."

* * * * *

"Art. 48. 'Promissory notes.' — (a) A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to such other person, or to order or to bearer, free from restrictions as to registration or transfer, and usually without coupons.

(b) The stamp tax on a promissory note is measured by the amount of the principal obligation without regard to the form in which the obligation to pay interest is expressed."

* * * * *

"Art. 58. Coupons and interest notes.—(a) Coupons attached to bonds, debentures, or certificates of indebtedness issued by any individual, partnership, or corporation, or to instruments, however termed, issued by a corporation and known generally as corporate securities (all of which are subject to tax as bonds of indebtedness under Schedule A 1), are not subject to tax if they impose no obligation not imposed by the principal instrument.

(b) Interest coupons attached to promissory notes taxable under Schedule A 6, as distinguished from the securities enumerated in paragarph (a), if they are themselves promissory notes, separable from the principal obligation and negotiable independently of it, are subject to tax, even though they impose no obligation not imposed by the principal instrument."

Appendix C

SEC. 1107-A-1, REG. 55, ART. 8: Bonds of indebtedness described.

(See ST. 1-20-85, sec. 1107-A-1, Reg. 55, art. 14.) What are "Certificates of indebtedness"?

SEC. 1107-A-1, REG. 55, ART. 14: Conditional bills of sale. ST. 1-20-85. I.O.909.

(Also Sec. 1107-A-1, Reg. 55, Art. 8.)

The term "certificates of indebtedness" as used in subdivision 1, Schedule A, Title XI, Revenue Act of 1918, includes only instruments having the general character of investment securities as distinguished from instruments evidencing debts arising in ordinary transactions between individuals.

Conditional bills of sale are not certificates of indebtedness.

T.D. 2713 should be modified to conform to this holding.

The question is presented as to the meaning of the term "certificates of indebtedness" as used in subdivision 1, Schedule A, Title XI, Revenue Act of 1918. This question arises in connection with conditional bills of sale, variously worded, used in the sale of merchandise on the installment plan.

Subdivision 1 of Schedule A provides:

Bonds of indebtedness: On all bonds, debentures, or certificates of indebtedness issued by any person, and all

instruments, however termed, issued by any corporation with interest coupons or in registered form, known generally as corporate securities, on each $100 of face value or fraction thereof, 5 cents. * * *

The instruments taxable under this subdivision are "bonds of indebtedness." Under this denomination two classes of instruments are included:—First, "all bonds, debentures, or certificates of indebtedness issued by any person"; and, second, "all instruments, however termed, issued by any corporation with interest coupons or in registered form, known generally as corporate securities." The term "person" for the purposes of the Revenue Act of 1918 is defined (sec. 1) as including "partnerships and corporations, as well as individuals." Thus all bonds, debentures, or certificates of indebtedness issued by any individual, partnership, or corporation are subjected to the stamp tax imposed by this subdivision *eo nomine*.

The words "all instruments, however termed, issued by any corporation with interest coupons or in registered form, known generally as corporate securities," were clearly added in recognition of the varied forms in which corporate securities are issued, and to defeat any attempt by a corporation to avoid the tax by issuing instruments of the general character of bonds, debentures, or certificates of indebtedness under a different name. In re Stark's Will, 149 Wis. 631, 134 N. W. 389, 399, it was said:

While the word "securities" construed strictly does not cover corporate stock, but rather bonds or evidences of debt, it has undoubtedly acquired a much broader meaning by general usage. It is said in 25 A. & E. Ency. of Law at page 180: "The term in its broadest sense em-

braces bonds, certificates of stock, promissory notes, bills of exchange," etc. The Century Dictionary defines securities as "evidences of debt, or of property; as a bond or certificate of stock." See 1 Cook on Corporations (6th Ed.), secs. 14 and 305, to the same effect.

But as used in this subdivision it is clear that the word "securities" is used in its strict sense, since they are required to be "issued * * * with interest coupons or in registered form." Moreover, certificates of stock, promissory notes, and bills of exchange are separately taxed under subdivisions 3 and 6 of said Schedule A. The words "known generally as corporate securities" therefore limit the broader language which precedes them to instruments of the general nature of corporate bonds or evidences of corporate debt.

Bonds, i. e., bonds of indebtedness, are too familiar to require extended definition. Their essential characteristic is that they are executed under seal. The Century Dictionary defines "debenture" as "A writing acknowledging a debt; specifically, an instrument, generally under seal, for the repayment of money lent; usually, if not exclusively, used as obligations of corporations or large moneyed copartnerships, issued in a form convenient to be bought and sold as investments." This definition was adopted by the court in Barton Nat. Bank *v.* Atkins, 72 Vt. 55; 47 Atl. 176, 180. The term "certificates of indebtedness" has also come to have in commercial use a similar meaning. In Denver *v.* Home Savings Bank, 236 U. S. 101, 105, the court said:

What is true about bonds is true about certificates of indebtedness. Indeed it is difficult to see any distinction

between them as they are commonly known to the business world. The essence of each is that they contain a promise under seal of the corporation to pay a certain sum to order or bearer.

If the term "certificates of indebtedness" standing by itself be susceptible of a broader meaning than that given to it above, its association here with bonds and debentures excludes such broader meaning. The maxim *noscitur a sociis* applies.

A consideration of Title XI as a whole supports the conclusion above arrived at. Three classes of paper issued by individuals, partnerships, and corporations are subject thereunder to stamp tax: Bonds of indebtedness (subdivision 1), certificates of stock (subdivision 3), and drafts or checks and promissory notes (subdivision 6); i. e., instruments possessing to a greater or less extent the attributes of commercial paper.

The premises lead inevitably to the conclusion that it was not the intention of Congress to tax under subdivision 1 of the said Schedule A every evidence of indebtedness other than those included under the heads of shares or certificates of stock, promissory notes, or bills of exchange, but only those evidences of indebtedness which have the general character of investment securities and which may properly be included under the term "bonds of indebtedness." The definition of "certificate of indebtedness" as "primarily any instrument acknowledging liability for the payment of money, not in the recognized form of a promissory note or bill of exchange," contained in T. D. 2713, is too inclusive and does not sufficiently delimit the instruments included in the term.

It is therefore held that the term "certificate of indebtedness" as used in subdivision 1 of Schedule A, Title XI, Revenue Act of 1918, includes only instruments having the general character of investment securities, as distinguished from instruments evidencing debts arising in ordinary transaction between individuals; and that conditional bills of sale are not certificates of indebtedness.

T. D. 2713 should be modified to conform with this holding.

ROBERT N. MILLER,
Solicitor of Internal Revenue.